

- e) The development consists of existing dwelling units leased by the state public body from the private owner of these dwelling units.
- f) The development consists of the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a previously existing low-rent housing project.
- g) The development consists of the acquisition, rehabilitation, reconstruction, improvement, or any combination thereof, of a rental housing development which, prior to the date of the transaction to acquire, rehabilitate, reconstruct, improve, or any combination thereof, was subject to a contract for federal or state public body assistance for the purpose of providing affordable housing for low-income households and maintains, or enters into, a contract for federal or state public body assistance for the purpose of providing affordable housing for low-income households.

This constitutional amendment repeals Article 34 of the California Constitution.

COMMENTS

- 1) *Author's statement.* "California has only 22 affordable and available rentals for every 100 extremely low-income households. A majority of California renters spend more than 30% of their income on housing (nearly one-third spend more than half). Too many people are one missed paycheck away from homelessness. Article 34 was created in response to the Federal Housing Act of 1949, part of President Truman's Fair Deal to help lower-income post-war families move into better living situations. Society had very different attitudes about race, ethnicity, class, and poverty 70 years ago. There were far less tools for residents to alter or block plans for new housing—no California Environmental Quality Act, Brown Act, or Coastal Act, and far fewer lawsuits. California's voters have made it clear they want leaders to do better by those struggling to afford housing—supporting ballot measures dedicating hundreds of millions in taxpayer dollars to tackling the housing and homelessness crises. The state owes it to all taxpayers to use the money as efficiently as possible. SCA 2 will give voters an opportunity to eliminate an obstacle enshrined in the California Constitution in a bygone era, which undermines elected officials' ability to address California's acute housing and homelessness challenges."
- 2) *Article 34 history.* Article 34 was added to the California Constitution in 1950 on the heels of the passage of the federal Housing Act of 1949. The Housing Act of 1949 banned explicit racial segregation in public housing, which left

cities scrambling to find alternative ways to separate communities of color from white neighborhoods. The real estate industry, unable to stop the passage of the Housing Act of 1949 at the federal level, sought to slow and stop its implementation at the state and local level.

The enactment of Article 34 grew out of a controversy surrounding a low-income housing project in Eureka, California. The local Housing Authority had applied for federal funding to cover the costs of planning and surveys for a low-income public housing development. After the application for funding was submitted, the City Clerk received a signed petition from more than 15% of the city electorate, requesting any city council approval of the loan application be submitted to the voters for approval. A lawsuit made its way to the California Supreme Court, holding that the power of referendum applies only to legislative acts, not acts that are executive or administrative. Since the acts were administrative and not legislative, the people could not use a referendum to change the city government's decisions, and the court had no jurisdiction.

Given that the citizens of Eureka could not make decisions around low-income housing developments in their community, they joined forces with the California Real Estate Association (known today as the California Association of Realtors) to enact Article 34 on the November 1950 ballot. According to the argument supporting the initiative, a vote in favor of adding Article 34 to the California Constitution was a vote for the right to say yes or no when a community was considering a low-income housing project. Supporters argued the need for community control was necessary because of tax waivers, and other forms of community assistance that a public housing project required.

Campaign materials and internal documents produced by the California Real Estate Association, the organization behind the ballot measure enacting Article 34 indicate that the constitutional change was more than just giving a voters a say in the approval of housing projects. According to the *Los Angeles Times*, an internal newsletter from the California Real Estate Association legislative committee Chairman stated:

“If you value your property, if you hold liberty dear, if you believe in the dignity of the individual, if you love this land of the free and the home of the brave, if you desire to stop the enemy of socialism that is gnawing at the vitals of America from within, the ballot box is your weapon, the one and only means by which our great Republic will be preserved and improved.”

- 3) *Practical impacts on housing development.* Article 34 requires that voter approval be obtained before any “state public body” develops, constructs or

acquires a “low rent housing project.” Cities, counties, housing authorities and agencies are all “state public bodies” for purposes of Article 34. As a result, if any of those entities participates in development of a “low rent housing project” and that participation rises to the level of development, construction, or acquisition of the project by the agency, approval by the local electorate is required for the project.

Local agencies usually seek general authority from the electorate to develop low income housing prior to the identification of a specific project. For example, a typical Article 34 election might authorize construction of 500 low income units anywhere in the city or county’s jurisdiction, including its housing authority or other state public bodies. Not all low- and moderate-income housing is a “low rent housing project.” To clarify the requirements of Article 34, the Legislature clarified in statute that specified projects would not require voter approval, such as projects in which less than 49% of the units are occupied by low-income families; ad privately owned housing that does not receive public financing; and owner-occupied developments.

Jurisdictions that do not comply with Article 34 requirements are not eligible for state funds.

- 4) *Prior attempts at repeal.* In 1971, *James v. Valtierra* tested the constitutionality of Article 34. After low-income housing proposals were defeated by referenda in San Jose and San Mateo County, a group of black and Mexican-American persons who were eligible for low-income housing in these communities filed suit alleging Article 34 violated the federal Constitution’s Supremacy Clause, Privileges and Immunities Clause, and Equal Protection Clause. The US Supreme Court found that Article 34 did not rest on “distinctions based on race” because a referendum was required on any low-income project when the project was within the guidelines set forth in the article, not just projects which were to be occupied by racial minorities. The appellees also argued that Article 34 denied equal protection to low-income households because they were singled out for a mandatory referendum. The Court disagreed with this argument as well by pointing out that a referendum is a democratic decision-making procedure and that California has a long history of using the referendum process to influence or make public policy.

In 1974, Assemblymember Willie Brown authored a bill in the Legislature, which placed the repeal of Article 34 on the ballot as Proposition 15. That measure was defeated. In 1977, Assemblymember Brown authored a modification of Article 34, which placed Proposition 4 on the 1980 ballot. Again this was defeated. The most recent attempt at repeal took place in 1993

as Proposition 168, this time with the support of the California Association of Realtors, which failed passage on a 60% vote.

Presently, no other state constitution requires voter approval for public housing.

- 5) *November 2022 Ballot.* If this constitutional amendment passes the Legislature, the authors intend to put the amendment on the November 2022 ballot.
- 6) *Double referral.* This constitutional amendment is also referred to the Elections and Constitutional Amendments Committee.

RELATED LEGISLATION:

SCA 1 (Allen, 2020) — would have repealed Article 34 of the California Constitution, which requires majority approval by the voters of a city or county for the development, construction, or acquisition of a publicly funded affordable housing project. *This bill died at the Assembly Desk.*

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

POSITIONS: (Communicated to the committee before noon on Friday, April 23, 2021.)

SUPPORT:

California Association of Realtors (Co-Sponsor)
California Housing Consortium (Co-Sponsor)
California Rural Legal Assistance Foundation (Co-Sponsor)
California YIMBY (Co-Sponsor)
Merritt Community Capital Corporation (Co-Sponsor)
Western Center on Law & Poverty (Co-Sponsor)
Abundant Housing LA
AIDS Healthcare Foundation
American Planning Association, California Chapter
California Housing Partnership Corporation
City of Pasadena
City of Pleasanton
East Bay for Everyone
East Bay Housing Organizations
Eden Housing
Facebook, INC.
Health Officers Association of California

Housing Action Coalition
League of Women Voters of California
Long Beach YIMBY
Los Angeles Homeless Services Authority
Mountain View YIMBY
North Bay Leadership Council
Northern Neighbors
Path
Peninsula for Everyone
People for Housing - Orange County
San Fernando Valley YIMBY
San Francisco Bay Area Rapid Transit District (BART)
Santa Cruz YIMBY
Silicon Valley Leadership Group
South Bay YIMBY
Streets for People Bay Area
Urban Environmentalists
YIMBY Action
Zillow Group

OPPOSITION:

None received

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